IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 18996 of 2005(J)

AGAINST THE ORDER DATED / / IN EP.NO.367 / 1981 IN OS.562/1957 of PRL.M.C.,ERNAKULAM

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PETITIONERS:
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1. **M.K.VISWAMBARAN, S/O.KUTTAN KAKKI, AGED 64(PETITIONER), MACHANKATTIL HOUSE, THIRUVAMKULAM, ERNAKULAM DISTRICT.**

2. **M.K.SUCHEENDRAN, S/O.KUTTAN KAKKI, AGED 58, MANCHAKATTIL HOUSE, THIRUVANKULAM, ERNAKULAM DISTRICT.**

3. **M.K.RAJAPPAN, S/O.KUTTAN KAKKI, AGED 56, MANCHAKATTIL HOUSE, THIRUVANKULAM, ERNAKULAM DISTRICT.**

4. **M.K.VIJAYAN, S/O.KUTTAN KAKKI, AGED 53(PENSIONER), MANCHAKKATTIL HOUSE, THIRUVAMKULAM, ERNAKULAM DISTRICT.**

BY ADV. SRI.C.P.RAVIKUMAR

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY ITS CHEIF SECRETARY, THIRUVANANTHAPURAM.**

2. **DEVAKI AMMA, D/O.KARTHIYANI AMMA, AGED ABOUT 70, THOTTAPPILLIL, CHOORAKATTUKARA, KIZHAKAMBALAM.**

3. **SANKARA NARAYANAN, S/O.KARTHIYANI AMMA, AGED ABOUT 66, THOTTAPPILLIL, CHOORAKATTUKARA, KIZHAKAMBALAM.**

**4 . VENUGOPALAN, S/O.KARTHIYANIA AMMA,
AGED ABOUT 62, THOTTAPPILLIL, CHOORAKATTUKARA,
KIZHAKAMBALAM.**

**5. BALAKRISHNAN, S/O.KARTHIYANI AMMA,
AGED ABOUT 57, THOTTAPPALLIL,
CHOORAKATTUKARA, KIZHAKAMBALAM.**

**6. RAVEENDRAN, S/O.KARTHIYANI AMMA,
AGED ABOUT 54, THOTTAPPILLIL,
CHOORAKATTUKARA, KIZHAKAMBALAM.**

**7. SURENDRAN, S/O.KARTHIYANI AMMA,
AGED ABOUT 50, THOTTAPPILIL,
CHOORAKATTUKARA, KIZHAKAMBALAM.**

**BY ADV. SRI.K.V.JAYACHANDRAN
SRI.RAJU V.MATHEW
BY GOVERNMENT PLEADER SRI.SHYSAN P.MANGUZHA**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.18996/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SALE DEED NO.1432/1123 M.E.

EXT.P2:- COPY OF THE PARTITION DEED NO.285/1107 M.E.

EXT.P3:- COPY OF THE SALE DEED NO.963/1119 M.E.

EXT.P4:- COPY OF THE JUDGMENT IN OS. NO.562/57.

EXT.P5:- COPY OF THE JUDGMENT IN AS. NO.170/67.

EXT.P6:- COPY OF THE EP. NO.367/81.

EXT.P7:- COPY OF THE COMMISSION REPORT.

EXT.P8:- COPY OF THE ORDER IN EP. NO.367/81.

EXT.P9:- COPY OF THE ORDER IN CRP. 219/94.

EXT.P10:- COPY OF THE ORDER IN EP. NO.367/81.

EXT.P11:- COPY OF THE APPLICATION IN EA. NO.1027/04.

EXT.P12:- COPY OF THE ORDER DT. 2.6.05.

EXT.P13:- COPY OF THE EXTRACT OF THE PROCEEDINGS DT. 23.6.05 IN EP. NO.367/81.

/TRUE COPY/

P.A. TO JUDGE

tss

PIUS C. KURIAKOSE, J.

W.P.(C) No. 18996 OF 2005

Dated this the 30th day of July, 2007

JUDGMENT

In this Writ Petition under Article 227 the judgment debtor against who a decree of recovery of possession has been passed and entitling him to value of improvements payable by the decree holder impugns Ext.p12 order of the execution court. Ext.P12 is passed on the basis of Ext.p11 application. That application was for restoration of an execution petition which had been dismissed for default and also for condonation of the delay caused in the matter of depositing the value of improvements which had been ordered to be deposited. As for restoration of the execution petition it is to be noticed immediately that there was no delay in filing that application since the same was filed within 30 days of the dismissal of the execution petition. As for the direction regarding the deposit of value of improvements, the court had not fixed any particular date for deposit of improvements. But as rightly submitted by Mr.C.P. Ravikumar, counsel for the petitioner, the court obviously wanted the value of improvements to be deposited before 08.09.04, the date on which the delivery was ordered to be given to the decree holder. In fact on 08.09.04 the decree holder orally applied for time(obviously for making deposit of the value of improvements) and on

that oral application, the execution court adjourned the case to 18.09.04. On 18.09.04 noticing that deposit was not made, the learned Munsiff dismissed the execution petition it is that order dismissing the execution petition which is now set aside by the learned Munsiff under Ext.P12. I have already stated that there was no delay in the matter of filing the application for restoration of the execution petition. Delay if at all was in the matter of deposit of the value of improvements. Since no fixed time had been fixed for depositing the value of improvements, the power which was exercised by the court was only the power for enlargement of the time, which according to me is available under Section 148 of the Code with the execution court also. It should noticed that the time if at all was fixed by the court and not by the provisions of the Code or any other law.

2. My attention was drawn by Sri.Ravikumar to the judgment of the Supreme Court in **Balram Son of Bhasaram v. Ilam Singh & others [1996 Supreme Appeals Reports(SC) 900]**. That decision cannot be applied to this case, since that was a case where their lordships were concerned with enlargement of the time by the execution court beyond the statutory time limit fixed for deposit of the purchase price by auction purchaser decree holder under Order XXI Rule 85. The amount in this case was actually deposited by the decree holder on 22.09.04 i.e. within three days of 18.09.04. Thus virtually what the court

has done is to enlarge the time already fixed by the court by just three days.

I do not find any infirmity about what the court has done. Mr.Ravikumar would address a further argument that there has been no proper reassessment of value of improvements actually payable to the petitioner pursuant to Ext.P9. Learned counsel went to the extent of submitting that this Court under Ext.P9 has directed payment of 'revaluated cost' which according to the learned counsel would take in not only the reassessment of value of improvements but also the original purchase price. It is difficult to accept the above argument. At the same time, I am of the view that the learned Munsiff was not justified in allowing Ext.P9 without imposing any conditions. Even as I uphold Ext.P12, there will be a direction that the decision taken under Ext.P12 will be conditional on the petitioner paying a sum of Rs.1,501/- to the respondent by way of cost which can be paid either to the respondent directly or through the respondent's counsel in this court within two weeks from today. If payment as directed above is made within the stipulated time, Ext.P11 will stand dismissed and the Writ Petition will stand allowed.

PIUS C. KURIAKOSE, JUDGE

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